should be phoned at his residence. A phone call was made to some one, the only result of which apparently was that the plaintiff was told to hand over the keys of the car as otherwise it would be removed by force.

The plaintiff, not surprisingly, was frightened and distressed over the incident and as she did not want the car damaged handed over the keys and they drove off.

In any view of the case the seizure was not only ill-advised but premature. It is true it was a Saturday afternoon but that was no fault of the plaintiff's and I am satisfied that no real or genuine attempt was made by the defendants to verify the plaintiff's statement that her husband had already forwarded a remittance of $225. The defendants employed what their business manager described as a "professional seizor" who was paid $40 a seizure. He appeared to be in a considerable hurry and anxious to effect the seizure at all costs and I can only describe his behaviour as high-handed if not insolent.

The first that the plaintiff knew that the car was to be seized was on looking out of her window on hearing a knock at the door she saw the professional seizor sitting, as she put it, very comfortably in the driving seat of her car which was parked right outside her front door. During the ensuing conversation the plaintiff had with his male companion, she was interrupted by the professional seizor calling out peremptorily to him to get the keys and come quickly. By this time a large crowd had gathered round and the plaintiff, again not surprisingly, was very embarrassed and ashamed to show her face.

What I have to determine is what is a reasonable figure to award in respect of the loss of the use of the car to the plaintiff and by way of exemplary damages which the manner of the seizure in this case warrants. This is always a difficult matter to assess and the evidence with regard to loss of use is not as clear as it might be. Giving the best consideration I can to the matter I consider that an award of $4,000 would be reasonable in the circumstances.

There remains the question of the set-off claimed by the defendants amounting to $1,425 being the balance of the loan for $3,000 still outstanding and unpaid by the plaintiff. This was the subject of an application to amend by the defendant company made at the trial which I allowed. After the close of the evidence and after the defendants' Counsel had concluded his address, Counsel for the plaintiff made an application to amend by pleading that the set-off was unenforceable under and by virtue of the provisions of the Moneylenders Ordinance. This application was opposed because of its lateness but I allowed it. No application was made by the defendants' Counsel for an adjournment and although I invited him to address further argument on the merits of the amendment he declined to do so. Be that as it may, the Court in any event, so it seems to me, is bound to take notice of a matter such as this whether pleaded or not and will not seek to enforce a contract which is by Statute rendered unenforceable.

The evidence of the defendants' business manager was that they lent money to a number of their customers in precisely the same way as they did in this case. I am satisfied that the defendants were carrying on the business of moneylenders at the material time and that this was money lending transaction and unenforceable because of its failure to comply with the provisions of the Moneylenders Ordinance. The defendants' claim to set off the sum of $1,425 fails and must be dismissed.

In the result, therefore, the plaintiff is entitled to the value of the car which at the date of seizure was admitted by the defendant company to be $5,000 and to $4,000 damages.

There will be judgment accordingly for the plaintiff for $9,000 and costs.

Judgment for the plaintiff.

Solicitors: *L. A. J. Smith; Lee & Lee.*

Re UNITED MARINE SUPPLY CO.

[O. C. J. (Rose C.J.) November 16, 1960]

[Singapore — In Bankruptcy No. 298 of 1960]

Bankruptcy — Notice — Claim more than debt due —.Bankruptcy Ordinance (Cap. 11), s.131.

The claim in this case was for balance due on a final judgment and erroneously included a sum of $50 which had been accepted by the creditor as payment towards the judgment debt.

Held: the defect cannot be cured by invoking section 131 of the Bankruptcy Ordinance.

Case referred to:—

(1) *In re a Debtor* [1908] 2 K.B. 684.

BANKRUPTCY.

Ten Chin Yong for the debtor.

C. S. Wu for the creditor.

Rose C.J.: The debtor here in opposing this petition for a Receiving Order being made against his firm contends that the bankruptcy notice, on which the act of bankruptcy to support the petition is based, is bad in that it is for a claim which is more than the debt due. The claim is for balance due on a final judgment of the High Court and erroneously includes a sum of $50 which had been accepted by the creditor as payment towards the judgment debt.

Counsel for the debtor relies on the case of *In re a Debtor*,(1) to support his contention that the defect in the bankruptcy notice is not a mere formal defect or irregularity which could be rectified by the Court. In that case, the mistake was in the calculation of interest and Cozens-Hardy M.R. held that "both on principle and on authority it seems to me that when you find a notice including in the claim for payment a sum which is not due from the debtor at all, that is not a mere formal defect within section 143, subsection (1)" of the Bankruptcy Act, 1883.

Following the above case I am of the opinion that the defect in the present case cannot be cured by invoking the provisions of section 131 of the Bankruptcy Ordinance which is in *pari materia* with section 143 sub-section (1) of the Bankruptcy Act 1883.

That being so, I uphold the objection taken by the debtor and dismiss this petition with costs.

Petition dismissed.

Solicitors: *C. J. Koh & Co.; Donaldson & Burkinshaw.*

REMBHA BAI & ANOR. v. JASANI

[C. A. (Thomson C.J., Rigby and Ong JJ.) December 13, 1960]

[K. L. — F.M. Civil Application No. 2 of 1960]

Practice and Procedure — Court of Appeal — Extension of time — Appeal in forma pauperis — Notice of Appeal should be given without waiting for result of application to proceed as a poor person.

Where a party desires to appeal against a judgment of the High Court and also wishes to secure leave to appeal *in forma pauperis* the proper course is to give Notice of Appeal within the prescribed period without waiting for the event of his application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium.*

Case referred to:—

(1) *Addison* v. *Addison & Holden* [1960] 1 W.L.R. 1088; [1960] 3 All E.R. 187.

COURT OF APPEAL.

H. B. Ball for the applicant.

Respondent absent.

Thomson C.J. delivering oral judgment: This is an application for extension of time within which to file Notice of Appeal against a judgment of the High Court. The ground on which extension is asked for is that the applicant is said to be a poor person and has been engaged in securing leave to appeal *in forma pauperis.*

We are going to grant the application, which is not opposed, by giving her time till 31st December but we wish to express the view, following what was said by the Court of Appeal in England in the case of *Addison* v. *Addison & Holden*[1], that in such a case the proper course is to give Notice of Appeal within the prescribed period and not await the event of any application to proceed as a poor person.

The period for filing is limited on the strongest grounds of public policy expressed in the maxim *sit finis litium.* The actual expense of giving Notice of Appeal is trivial and public policy demands that a successful litigant should have notice within the time prescribed by law that his position may be challenged.

Application allowed.

Solicitors: *Allen & Gledhill.*

LIEW KALING & ORS. v. PUBLIC PROSECUTOR

[C. A. (Thomson C.J., Hill J.A. and Hepworth J.) December 14, 1960]

[Penang — F.M. Criminal Appeal No. 20 of 1960]

Criminal Law and Procedure — Murder trial — Joinder of several capital charges — Undesirable.

Evidence — Conspiracy to commit murder — Evidence Ordinance, 1950, s.10 — Inference — Two conditions must be complied.

Quantum of proof — "Beyond reasonable doubt" — Test of "proved" under s.3 of the Evidence Ordinance — Direction to jury — Use of analogies.

The trial together of more than one charge of murder is undesirable.

The words of section 10 of the Evidence Ordinance are not capable of being widely construed so as to include a statement made by one conspirator, in the absence of the other, with reference to past acts done in the actual course of carrying out the conspiracy, after it has been completed. *Mirza Akbar* v. *King Emperor* (3) applied.

It is open to the jury to draw inferences from particular pieces of evidence, but it must be explained to them that before an inference can be regarded as a valid one it must comply with two conditions:

(i) it must account for all the known facts; and

(ii) it must be the only reasonable inference which will account for all these facts.

In many cases it is not necessary to give such a caution to the jury but in a case where the prosecution evidence consisted of a somewhat meagre body of primary facts from which the jury were asked by the prosecution to draw a number of inferences of the utmost gravity it would have been safer to give some guidance as to the principles of ratiocination which were applicable.

In any criminal case the onus lies upon the prosecution to prove that the accused person is guilty of the offence charged against him or of some other charge for which he can be lawfully convicted on the charge against him. The test of "proved" is the test of the prudent man according to "the circumstances of the particular case". It is undesirable to read section 3 of the Evidence Ordinance to the jury. The jury must be satisfied "beyond reasonable doubt". There is no set formula required. The degree of proof "need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt . . . If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond reasonable doubt, but nothing short of that will suffice." *Miller* v. *Minister of Pensions* (9) followed.

Cases referred to:—

(1) *Chew Ming* v. *Public Prosecutor* [1960] M.L.J. 11.

(2) *Rex* v. *Davis* 26 Cr. App. R. 95; [1937] 3 All E.R. 537.

(3) *Mirza Akbar* v. *King-Emperor* 67 I.A. 336, 348; 190 I.C. 233; I.L.R. 1940 Kar. 302; 43 Bom. L.R. 20; 73 Cr. L.J. 252; 45 C.W.N. 269; I.L.R. 1940 Lah. 612; [1940] 2 Mad. L.J. 811; A.I.R. 1940 P.C. 176.

(4) *Rex* v. *Grondkowski* [1946] 1 K.B. 369, 372.

(5) *Lawrence* v. *The King* [1933] A.C. 699, 707.

(6) *Rex* v. *Horry* [1952] N.Z.L.R. 111.

(7) *Kritz* 33 Cr. App. R. 169, 177.

(8) *Ismail bin Abdullah* v. *Public Prosecutor* [1959] M.L.J. 269, 270.

(9) *Miller* v. *Minister of Pensions* [1947] 2 All E.R. 372, 373.

(10) *Podmore's case* 22 Cr. App. R. 36.